

REMARKS

Applicants reply to the Office Action mailed on June 6, 2005 within the shortened statutory period for reply. Claims 1-47 are pending in the application and Applicants amend various claims to clarify antecedent basis and terminology. No new matter has been introduced by these amendments.

Claims 1-47 were pending and were objected to because of the following informalities: the individual claim numbers of all current claims are listed as "[c1]" ... "[c47]". Applicants respectfully traverse this rejection. Due to electronic filing of this application, the PTO software requires the claims to be listed as [c1] through [c47]. However, if the Examiner still believes that the claim numbering is inappropriate, Applicants respectfully request the Examiner to clarify the electronic filing requirements.

DOUBLE PATENTING

The Examiner provisionally rejects claims 1-7, 12-25, 27-30, 33-36, 38-41, 43, 45-47 under the judicially created doctrine of double patenting over claims 1-7, 11-24, 26-29, 32-35, 38-40, 42, 44-46, respectively, of copending Application No. 10/708,830 in view of Walker, U.S. Application No. 2003/0093187A1 ("Walker"). While Applicants respectfully traverse this double patenting rejection, in the interest of compact prosecution, Applicants submit a terminal disclaimer, without prejudice, in compliance with 37 C.F.R. § 1.321(c). Applicants also assert that this nonstatutory double patenting rejection is based on the above-listed application, No. 10/708,830, which is commonly owned with this application by assignee, American Express Travel Related Services Company, Inc.

Further, the Examiner asserts that "Walker discloses a card or tag that can detect odors" [0715], and that it would have been obvious "to use the odor detector of Walker in the biometric card of the copending '830 application claims." (page 3) Applicants respectfully traverse this rejection. Walker generally discloses a controller and mobile communication router platform for providing remote and robotics control to transportation vehicles. Walker is limited to using a detector to detect odors and "compare [the odors] to known toxins and dangerous substances in an electronic library" for airport security purposes ([715]). Because the '830 reference is now mooted by the filing of the terminal disclaimer, it no longer would be obvious to use "the odor detector of Walker in the biometric card of the copending '830 application." (page 3). That is, Walker fails to disclose biometric smellprint detection for facilitating payments. As such,

Walker does not disclose or suggest at least "a verification device configured to verify said proffered smellprint sample to facilitate a payment transaction," as similarly recited in independent claims 1, 23 and 35.

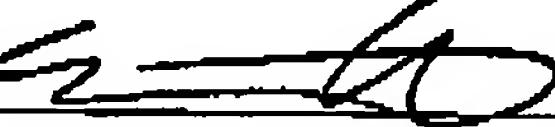
The Examiner objects to Claims 8-11, 26, 31-32, 37, 42, 44 as being dependent upon a rejected base claim, but allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, Applicants assert that independent claims 1, 23, and 35 are now allowable claims in view of the Terminal Disclaimer filed herewith.

CONCLUSION

Applicants respectfully submit that the pending claims are in condition for allowance. No new matter is added in this Reply. Reconsideration of the application is thus requested. The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 19-2814. Applicants invite the Examiner to telephone the undersigned if the Examiner has any questions regarding this Reply or the application in general.

Respectfully submitted,

Dated: August 3, 2005

By: 
Emma Harty
Reg. No. 56,677

SNELL & WILMER L.L.P.
400 East Van Buren
One Arizona Center
Phoenix, Arizona 85004-2202
Telephone: (602) 382-6347
Facsimile: (602) 382-6070